

Federal Emergency Management Agency

§ 7.14

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the agency and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this regulation, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with this regulation with respect to two or more programs to which this regulation applies, or non-compliance with this regulation and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Director of the Federal Emergency Management

Agency may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this regulation. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with section 14.

§ 7.14 Decisions and notices.

(a) *Decision by person other than the responsible agency official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever he conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of his final decision shall be given in writing to the applicant or recipient and to the complainant, if any.

§ 7.15

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to section 13(a) a decision shall be made by the responsible agency official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible agency official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this regulation with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Director.* Any final decision of a responsible agency official (other than the Director of the agency) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this regulation or the Act, shall promptly be transmitted to the Director of the Federal Emergency Management Agency who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation, unless and until it corrects its noncompliance and satisfies the Director of the Federal Emergency Management Agency that it will fully comply with this regulation.

§ 7.15 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

44 CFR Ch. I (10–1–01 Edition)

§ 7.16 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Federal Emergency Management Agency which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede Executive Orders 10925 and 11114 (including future amendments thereof) and regulations issued thereunder, or any other regulations or instructions, insofar as such regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this regulation as applied to programs to which this regulation applies and for which he is responsible.

(c) *Supervision and coordination.* The Director of the Federal Emergency Management Agency may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this regulation (other than responsibility for final decision as provided in section